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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91162370
Party	Plaintiff De Boulle Diamond & Jewelry, Inc.
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Submission	Motion for Summary Judgment
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DE BOULLE DIAMOND & JEWELRY, INC.,	
Opposer,	Consolidated Opposition No.: 91162370
v.	Opposition No.'s: 91162370
DE BEERS LV LTD.,	91162469
Applicant.	91164615
	91165285
	91165465

STATE OF TEXAS §
COUNTY OF DALLAS §

1. My name is Denis J. Boulle. I am over eighteen years of age, have never been convicted of a crime and am fully competent to make this affidavit. I have personal knowledge of the facts stated herein, all of which are true and correct.

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3. I am the Chief Executive Officer and Chairman of the Board of De Boulle. I previously held the Office of president of De Boulle, having functioned in that capacity since its incorporation. I have been in the business of marketing and selling diamonds, fine jewelry and timepieces to the general public in the United States since 1982. I am a Member of Jewelers of America, and the Retail Jewelers Advisory Board of the American Watch Guild (I am also a founding Board Member of the American Watch Guild).

4. De Boulle was incorporated by the Secretary of State of Texas on September 26, 1983, as Quadrant Diamond Counsel, Inc. On June 29, 1984, De Boulle changed its name to De Boulle Diamond & Jewelry Counsel, Inc. On June 13, 1988, De Boulle changed its name to De Boulle Diamond & Jewelry, Inc.

5. De Boulle owns and operates a jewelry store in Dallas, Texas under the service mark “De Boulle”, and has done so since 1984. As such, De Boulle has marketed and sold diamonds, fine jewelry and timepieces to the general public in Dallas, Texas, and elsewhere in the United States in association with the brand De Boulle for almost twenty five (25) years. Over the past three (3) years alone, at least thirty-five percent (35%) of De Boulle’s sales were made to consumers with residences outside the State of Texas. De Boulle markets its brand and products to purchasers of engagement and wedding rings, gifts for special occasions, such as birthdays, anniversaries, and the Holidays, and connoisseurs and consumers of luxury products in general. Trust and brand identification are an important part of the buying decision to these customers. Over the years De Boulle has grown to become one of the premier independently owned jewelers in the United States.

6. Through the years, the De Boulle brand has developed a reputation in

Dallas, Texas, and elsewhere in the United States, for the fine quality of the exclusive jewelry that the De Boulle craftsmen custom design and manufacture, as well as the fine quality of its diamonds and other gems. De Boulle's marketing activities include advertising and promoting its brand and products in local and national luxury goods and lifestyle media, such as Vanity Fair, the Wall Street Journal, GQ Magazine, Millionaire Magazine, Robb Report, and Town & Country. True and correct copies of examples of national advertising placements by De Boulle in this regard, are attached hereto as Exhibit K. De Boulle, by way of further example, also markets its brand to the target market of connoisseurs of luxury and lifestyle products nationally, by advertisements on a race car that competes in events on the Formula Ford Zetec Cooper Tire Championship Series on the East Coast. De Boulle further promotes its brand and offers its De Boulle Collection and other products for sale to general public throughout the United States on its Web site, www.deboulle.com.

7. The De Boulle brand is also contained on in-store displays, local and national advertising, as well as packaging delivered and shipped with De Boulle's products to clients in Dallas, Texas, and elsewhere in the United States. True and correct copies of examples of the display of the De Boulle brand in association with De Boulle's products are contained in the de Boulle's Application for federal registration of the Mark "DE BOULLE", U.S. Trademark Application Serial No. 78/444,880 (the "DE BOULLE Mark").

8. In or about December 2000, as part of the design of its Web site, De Boulle designed the mark "DB", made the subject of its U.S. Trademark Application Serial No. 78/604,056 (the "DB Mark"). Since that time, De Boulle has used the DB Mark in

association with the fine jewelry, diamonds, and timepieces sold to the general public throughout the United States on the Web site. The DB Mark is also contained on packaging delivered and shipped with De Boulle's products to clients in Dallas, Texas, and elsewhere in the United States. True and correct copies of examples of the display of the DB mark in association with De Boulle's products are contained in de Boulle's U.S. Trademark Application Serial No. 78/604,056 for federal registration of the DB Mark.

9. In or about June 2001, as part of the redesign of its corporate identity to coincide with the opening of its new store, De Boulle designed the mark "DE B", made the subject of its U.S. Trademark Application Serial No. 78/440,907 (the "DE B Mark"). Since that time, De Boulle has also used the DE B Mark on in-store displays, local and national advertising, as well as packaging delivered and shipped with De Boulle's products to clients in Dallas, Texas, and elsewhere in the United States. True and correct copies of examples of the display of the DE B brand in association with De Boulle's products are contained in de Boulle's U.S. Trademark Application Serial No. 78/440,907 for federal registration of the DE B Mark.

10. Customers have come to identify the DB, DE BOULLE and DE B Marks (hereinafter collectively the "De Boulle Marks") with fine jewelry, diamonds, and timepieces, which are of the highest quality. Customers have come to identify the De Boulle Marks with fine jewelry, including diamonds, and timepieces which originate from De Boulle. The De Boulle Marks are valuable assets of De Boulle. The De Boulle Marks carry considerable goodwill and customer acceptance of the fine jewelry, diamonds, and timepieces offered under the De Boulle Marks. De Boulle's customers and potential customers have come to recognize the De Boulle Marks as representing the quality of De

Boulle's fine jewelry, diamonds, and timepieces. Indeed, in 2005, I met with Alyce Alston, the then Chief Executive Officer of De Beers Diamond Jewellers US Inc. ("De Beers"), at the De Boulle store in Dallas, Texas, at her request. At the meeting, De Beers requested that De Boulle consider carrying the De Beers line of products, as a result of the considerable goodwill and customer acceptance nationally of the fine jewelry, diamonds, and timepieces offered under the De Boulle brand.

11. I have reviewed and am familiar with the advertising and marketing campaign conducted by De Beers in the United States. I am also familiar with the products being offered by De Beers, at their new store in New York, New York, in Beverly Hills, California, and Las Vegas, Nevada.

12. Just like De Boulle, De Beers markets its products to purchasers of engagement and wedding rings, gifts for special occasions, such as birthdays, anniversaries, and the Holidays, and connoisseurs and consumers of luxury products in general. Based on my twenty five (25) years' experience marketing and selling diamonds and fine jewelry in to consumers located throughout the United States, I am of the opinion that diamonds and fine jewelry bearing the De Beers' brand and diamonds, and fine jewelry bearing the De Boulle Marks may be sought out and bought by the same consumer. Furthermore, because of the semantic similarity in the two brand names and their abbreviations, DB or De B, potential consumers of diamonds and fine jewelry marketed by De Boulle are likely to assume that De Boulle has expanded diamond and fine jewelry offerings to include the products offered by De Beers.

13. Just like De Boulle, De Beers markets its products under the De Beers brand through public advertising in national luxury goods and lifestyle media, and the


internet. The De Beers and De Boulle marketing and advertising campaigns are likely to reach the same consumer. Based on my twenty five (25) years' experience marketing and selling diamonds and fine jewelry in to consumers located throughout the United States, I am of the opinion that, because of the semantic similarity in the two brand names and their abbreviations, whether DB or De B, potential consumers of diamonds and fine jewelry marketed by De Boulle are likely to assume that De Boulle has expanded diamond and fine jewelry offerings to include the products offered by De Beers.

14. The De Beers marketing strategy involves selling its products to the general public through its company-owned stores in New York, Beverly Hills, Las Vegas, and elsewhere, and to offer De Beers branded diamonds and fine jewelry through a select network of reputable jewelry stores (such as de Boulle) in parts of the United States, where there are no company-owned stores, such as Texas. Based on my twenty five (25) years' experience marketing and selling diamonds and fine jewelry in to consumers located throughout the United States, I am of the opinion that, because of the semantic similarity in the two brand names and their abbreviations, whether DB or De B, potential consumers of diamonds and fine jewelry marketed by De Boulle are likely to assume that the De Beers products offered for sale under the De Beers brand are actually the diamonds and fine jewelry offered by De Boulle.

15. Additionally, any confusion between the De Boulle brand and the De Beers brand may cause De Boulle irreparable harm. In the market for diamonds and fine jewelry, the De Beers name has long been associated with the apartheid-era regimes in South Africa and its monopolistic practices to control diamond prices and the diamond market. De

Boulle has devoted almost twenty five (25) years in building its brand in the United States. The De Boulle brand and the De Boulle Marks are valuable assets of De Boulle. De Boulle would suffer irreparable harm if potential consumers of diamonds and fine jewelry assume that the diamonds and fine jewelry marketed by De Boulle in association with the De Boulle Marks are actually products offered by De Beers.


FURTHER AFFIANT SAYETH NAUGHT.


Denis J. Boulle

SUBSCRIBED AND SWORN TO BEFORE ME this 1st day of August, 2007, to
certify which witness my hand and official seal.



[NOTARY SEAL]


Notary Public, State of Texas

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document upon counsel of record by electronic mail on this the 9th day of August, 2007, and by mailing a true copy thereof with the Exhibits referenced herein, through the United States Mail, first class, postage prepaid, on the 16th day of August, 2007, and addressed as follows:

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